IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO.42 OF 2007

Smt.Sonabai Balgonda Patil : Appellant

(Orig.Deft.No.3)

V/s.

Shri Satgonda Ramgonda Patil & Ors. : Respondents

...

Mr.S.S.Patwardhan for the appellant.

Mr.D.A.Nalavade for the respondents.

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CORAM : S.A.BOBDE, J.

DATE : JULY 10, 2007.

P.C.

1. This Second Appeal is by the original defendant no.3.

2. The respondents had filed a suit for injunction and removal of encroachment done by the appellant. The Courts below have concurrently found that the appellant has encroached on the land of the respondents and have, therefore, decreed the suit. The decision whether there was an encroachment or not hinged on the report of the Commissioner which was ordered by the Addl. District Judge, Gadhinglaj, in an appeal.

3. After the remand, the learned trial Court considered the Commissioner's report and came to the conclusion that there is an encroachment as alleged by the respondents on the basis of an inspection carried out on two dates i.e. on 4.5.2001 and 10.8.2001.

4. The appellant filed an appeal against the judgement of the trial Court. Before the lower appellate Court, the appellant contended that the Commissioner's report and findings ought not to be accepted since the Commissioner failed to give any notice of the measurements which the respondent no.3 i.e. the present appellant was proposing to make on 10.8.2001. The appellate Court considered the evidence on record, including the Commissioner's evidence and rejected this submission of the appellant.

5. Mr.Patwardhan, the learned counsel for the appellant, submitted that the finding of the Courts below that the Commissioner had given a notice before carrying out the measurements on 10.8.2001 are perverse in that the Commissioner has himself stated that he did not give any such notice. That does not appear to be the correct submission on the basis of the Commissioner's evidence. The Commissioner's evidence has been considered by both the Courts below. The first appellate Court, in particular, has rejected this very submission. It is

obvious that even otherwise this contention raises a question of fact which could have been interfered with if the finding was arrived at perversely. That does not appear to be the case.

6. There is, therefore, no merit in the second appeal which is hereby dismissed.

7. In view of the dismissal of the appeal, the Civil Application does not survive and the same stands disposed of.

S.A. BOBDE, J.